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SUPREME COURT
STATE OF WASHINGTON

2008 MAY 12 P 4: 36

BY RONALD R. CARPENTER Supreme Court No. 80420-6


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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MUTUAL OF ENUMCLAW INSURANCE COMPANY,

Respondent

v.

T & G CONSTRUCTION, INC., and VILLAS AT HARBOUR POINTE
OWNERS ASSOCIATION,

Appellants.

REPLY TO ANSWER TO APPELLANTS' MOTION REGARDING
RECORD ON REVIEW

Daniel Zimmeroff, WSBA #25552
Attorney for Appellants
Villas at Harbour Pointe
Owners Association and T & G
Construction, Inc.

BARKER • MARTIN, P.S.
719 Second Avenue
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Seattle, WA 98104
Telephone: 206-381-9806

I. IDENTITY OF MOVING PARTY

Appellants Villas at Harbour Pointe Owners Association ("Association") and T & G Construction, Inc. ("T & G") provide the following Reply to Answer to Appellants' Motion Regarding Record on Review.

II. ARGUMENT

Respondent Mutual of Enumclaw Insurance Company ("MOE") argues "[t]he record on Appeal contains all materials presented to that Court." Ordinarily, that would be the case. However, in this case, the court of appeals linked both appeals, heard oral argument on the same day and published its rulings on the same day. The court had access to the Report of Proceedings and Exhibits 1, 2, 3, 6 and 7 from the underlying construction defect appeal when it ruled upon this appeal. This is not a case where a party is attempting to "supplement the record . . . with its own selection of documents found in a related case from another county." This petition involves several issues that carry over from an appeal in a companion case that was linked by the court of appeals.


Moreover, in its ruling, the court of appeals stated that, "In addition, the trial court appears to have erroneously relied on the reasonableness determination to decide whether policy exclusions

applied.” Ruling at 11. How can this Court comprehensively resolve this issue unless it has before it the record from the reasonableness hearing?

Lastly, testimony contained within the Report of Proceedings and the selected exhibits relate directly to insurance coverage issues relevant to Issues Presented for Review #2 and #3 in this appeal; *e.g.*, extent and type of property damage. This Court should have a complete record to review. Under RAP 1.2, the Association’s motion should be granted in order “to promote justice and facilitate the decision of cases on the merits.”

Respectfully submitted this 12th day of May, 2008.

BARKER • MARTIN, P. S.

A handwritten signature in dark ink, appearing to read "Dan Zimmeroff", written over a horizontal line.

Daniel Zimmeroff, WSBA No. 25552
Attorneys for Appellants Villas at
Harbour Pointe Owners Association
and T & G Construction, Inc.

Supreme Court No. 80420-6

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MUTUAL OF ENUMCLAW INSURANCE COMPANY,

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v.

T & G CONSTRUCTION, INC., and VILLAS AT HARBOUR
POINTE OWNERS ASSOCIATION,

Petitioners.

CERTIFICATE OF SERVICE

Daniel Zimmeroff, WSBA #25552
Attorney for Petitioners
Villas at Harbour Pointe
Owners Association and T & G
Construction, Inc.

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I, Ian McDonald, hereby certify and declare:

1. I am over the age of 18 years and am not a party to the within cause:

2. I am employed by the law firm of Barker Martin, P.S. My business and mailing address are 719 2nd Avenue, Suite 1200, Seattle, WA 98104-1749;

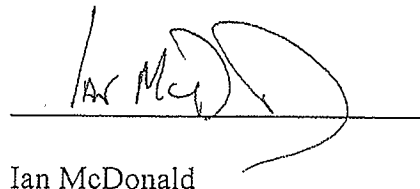
3. On the 12th day of May 2008, I caused to be served **Reply To Answer To Appellants' Motion Regarding Record on Review and Petitioners' Answer To Respondent's Motion To Dismiss** upon the following in the manner described below:

James M. Beecher
Hackett Beecher & Hart
1601 5th Avenue
Suite 2200
Seattle, WA 98101

Via Hand Delivery.

I declare under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 12th day of May, 2008 in Seattle, Washington


Ian McDonald